

July 19, 1996

Richard L. Harvey
WTUC
1018 Hillcrest Drive
Neshanic Station, New Jersey
08853

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FCC L.F. ROOM

Dear Sir:

Attached please find the original and nine copies of our **Comments on the Notice of Proposed Rule Making** on MM Docket No. 96-120.

Sincerely,


Richard L. Harvey

9 enclosures
FEDEX

No. of Copies rec'd 078
List ABCDE

before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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L.F.O.

In the Matter of)	
)	
Grandfathered Short-Spaced)	MM Docket No. 96-120
FM Stations)	RM-7651

To: Office of the Secretary

COMMENTS ON THE NOTICE OF PROPOSED RULE MAKING

The Commission in the subject Notice of Proposed Rule Making("Notice") proposes to lift restrictions that unnecessarily impede flexibility as to site selection for one category of grandfathered short-spaced FM station. The Commission proposes that these changes to the rules would only apply to those "grandfathered stations" at locations authorized prior to November 16, 1964 that did not meet the separation distances required by the later adopted Section 73.207 and have remained short-spaced since that time ("1964-grandfathered stations"). The commenter requests that the Commission include the currently grandfathered Class A FM stations (3000 watts ERP and 100 meters antenna HAAT) that became short spaced as of October 1, 1989("1989-grandfathered Class A stations") in the proposed rule changes pertaining to second-adjacent-channel and third-adjacent-channel protection criteria.

For 1989-grandfathered Class A FM stations, section 73.215 is intended to provide site flexibility. Section 73.215e specifies certain minimum distance separations that must be met. This table applies to both grandfathered and non-grandfathered stations. In the case of Class A to Class A minimum separation distances for second-adjacent and third-adjacent channels, the table requires 29 kilometers. However, the original rules under which 1989-grandfathered Class A stations were authorized required only 27 kilometers. As a result, Section 73.215 fails to provide any site flexibility in this one instance only to this category of grandfathered station. This appears to be an unintended restriction in the rules. In a Memorandum Opinion and Order(MO&O) adopted August 28, 1991 and released September 17, 1991, the Commission stated:

“The adoption of Section 73.215 provides for site selection flexibility in those exceptional circumstances where no fully space sites are available. We do not believe additional short-spacing waivers of Section 73.207 would generally be in the public interest where an alternate means of achieving a similar result, such as Section 73.215 is available. Therefore, we will deny the request that we reinstate consideration of Section 73.207 waivers.”

The Commission when it adopted Section 73.215 did not provide any means for the 1989-grandfathered Class A stations to obtain site relief whenever second-adjacent or third-adjacent channel Class A to Class A spacing is concerned.

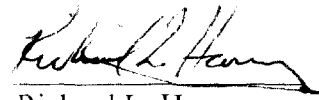
Since 1989-grandfathered Class A stations do not have any flexibility under the current rules when the short spacing involves a Class A second-adjacent or third-adjacent channel, it is conceivable that such a station could not be operated in the case of a forced relocation. In the case of the commenter's station, WTUC, which is still a construction permit and a 1989-grandfathered Class A station, we have not yet been able to gain approval from local officials. Those officials had difficulty accepting that the rules allow WTUC to utilize a directional antenna and operate short spaced in some directions but not other directions. WTUC has second-adjacent channel class A stations to both the northeast and south, and therefore is unable to locate very far northward, eastward or southward. The local officials hired a consulting engineer to study the FCC rules.

The Notice states as a reason for making the proposed rule changes, some flexibility that once existed for the 1964-grandfathered stations was lost with the more recent changes. The proposal restores that flexibility. In the case of the 1989-grandfathered Class A stations, in all circumstances **except** for Class A to Class A second-adjacent and third-adjacent channel spacing, Section 73.215 provides some level of flexibility. Including some provision for waiver or eliminating the second-adjacent-channel and third-adjacent-channel protection for all grandfathered stations would provide flexibility that had been intended when Section 73.215 was adopted.

Proposal 2 in the Notice discusses the reasons for eliminating the second-adjacent-channel and third-adjacent-channel protection for grandfathered stations. Most of the reasons discussed are also applicable to the 1989-grandfathered Class A stations. The Commission states that “the potential for such interference to occur depends, to a great extent, on the quality of the receivers used within the affected area.” and that “such overlap is confined to a very small area around the transmitter of the interfering station.” We agree with the Commission's conclusion and also conclude that changes in the design of FM consumer receivers during the last thirty years have improved greatly. We have found that most consumer equipment utilize ceramic filters and have very stable tuners. Additionally, the extent of the area where such interference could occur is dependent on the ratio of the desired signal to the interfering signal and will be a smaller area when the desired station has a stronger signal which is generally when the stations are located nearer to each other.

In summary, we request the Commission broaden the scope of the Notice to include all grandfathered stations and to include the 1989-grandfathered stations within the rules as proposed or make changes to Section 73.215 to provide some level of flexibility to 1989-grandfather Class A stations for the situations discussed herein.

Respectfully submitted,


Richard L. Harvey

WTUC(Tuckerton, NJ)
1018 Hillcrest Drive
Neshanic Station, New Jersey
08853